

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DOMINIQUE T. GULLEY,

Plaintiff,

v.

DR. SHANA LINDOW BECKER,

Defendants.

ORDER

11-cv-704-wmc

Plaintiff Dominique Gulley is proceeding in this action on his claim that defendant violated his Eighth Amendment rights by demonstrating deliberate indifference to his serious mental health problems. Defendant has responded to the complaint and a preliminary pretrial conference was held on January 13, 2012. Now plaintiff has filed a letter, which I construe as a motion, asking to dismiss this case.

When a motion for voluntary dismissal is filed after a defendant has filed an answer, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Because the defendants have been required to defend this action, I will grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice, unless defendants agree to a dismissal without prejudice. If the defendants do not agree to a dismissal without prejudice, then plaintiff will have an opportunity to withdraw his motion.

ORDER

IT IS ORDERED that defendant Dr. Shana Lindow Becker may have until January 30, 2012, in which to advise plaintiff and the court whether she agrees to dismissal of this action without prejudice. If defendant agrees to such a dismissal, then the clerk of court is directed

to close this case. If defendant does not agree to such a dismissal, then plaintiff Dominique Gulley may have until February 6, 2012, in which to withdraw his motion for voluntary dismissal or to advise the court that he has no objection to a dismissal with prejudice. If, by February 6, 2012, plaintiff fails to request withdrawal of his notice of voluntary dismissal, then the court will direct the clerk to enter judgment dismissing this case with prejudice.

Entered this 23rd day of January, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge